

MINUTES OF MEETING
RUSH RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
SEPTEMBER 17, 2013

The Rush River Water Resource District met on September 17, 2013, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Raymond Wolfer, Chairman; William A. Hejl, Manager; Dick Sundberg, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Brittany C. Moen, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels and Mike Opat, Engineers for the Board; Brady Woodard, Moore Engineering, Inc.; Ross Johnson, Agassiz Drain Tile, LLC; David Baumler and Lloyd Knight, property owners in Amenias Township.

Berlin Township Improvement District No. 70 – erosion protection options / costs

The Board discussed erosion protection on Berlin Township Improvement District No. 70. Mike Opat suggested waiting to see how much grass has come in on the project over a week or two before anything is done.

Berlin-Harwood Township Improvement District No. 72

The contractor for Berlin-Harwood Township Improvement District No. 72 will begin work on the project next week.

Amenias Township Improvement District No. 74

It was moved by Manager Hejl and seconded by Manager Sundberg to authorize Moore Engineering, Inc. to work with the contractor on protective measures for Amenias Township Improvement District No. 74 crossings. Upon roll call vote, the motion carried unanimously.

Project right-of-way was discussed.

It was moved by Manager Hejl and seconded by Manager Sundberg to approve the following regarding Amenias Township Improvement District No. 74:

- Resolution of Necessity; and
- Resolution of Offer to Purchase.

Upon roll call vote, the motion carried unanimously.

Additional minutes relating to Amenias Township Improvement District No. 74 are attached hereto.

Amenia Township Improvement District No. 75

Mr. Opat presented a proposed assessment district and summary of estimated costs on Amenias Township Improvement District No. 75. A meeting will be held to discuss the proposed project with landowners. The Board will decide if they will move ahead with the project after the meeting.

Drainage complaint from Duane Luther against Rodney G. Nelson, LLP and George Loegering in the SE 1/4 of Section 20 in Harmony Township

The Board next considered the Drainage Complaint filed by Duane Luther/Luther Kennel, LLC, against George Loegering and Rodney G. Nelson LLLP, dated August 21, 2013. In it, Mr. Luther alleges Mr. Loegering and/or Rodney G. Nelson LLLP, Mr. Loegering's tenant, constructed a ditch cleanout in the township road ditch along the west side of 159th Avenue in the SE 1/4 of Section 20 in Harmony Township. The Board previously directed their engineer to investigate the allegations of illegal or unpermitted drainage. Brady Woodard conducted a site visit. Mr. Woodard and Mr. Opat presented a map for the Board's review regarding the alleged drainage.

Mr. Woodard indicated the parties did conduct a ditch cleanout along the township road ditch. However, he did not find any evidence the parties deepened or widened the ditch. In fact, he concluded that the parties had merely removed sediment from the ditch, and there was no evidence they dug into the clay. Mr. Woodard further indicated the parties removed a manmade approach in the township road ditch.

Sean Fredricks indicated "maintenance" of a road ditch does not require a drainage permit under Section 89-02-01-05(1) of the North Dakota Administrative Code. The Administrative Code defines "maintenance" of an existing drain as "removal of silt and vegetation from a drain"; further, "maintenance does not include deepening or widening a drain." In this situation, because there was no evidence the parties deepened or widened the drain, and because the Board found the parties had merely removed sediment or silt from the township road ditch, Mr. Fredricks indicated that activity did not require a drainage permit.

With regard to removal of the manmade approach, Mr. Fredricks indicated that activity similarly did not require a permit. More specifically, township boards, and not water resource districts, have jurisdiction regarding approaches within their township road right of way, unless the approaches act as obstructions or illegal or unpermitted dikes in violation of North Dakota law. In this instance, the parties removed a manmade approach within township road right of way. Under N.D. Cent. Code § 24-06-11, township boards have specific obligations regarding approaches for landowners within township road right-of-way. Mr. Fredricks provided the following citations as support for this position:

24-06-11. Construction of crossings over ditches, drains, and roads.

Whenever a township constructs a ditch or drain in connection with road building, and such ditch, drain, or road interferes with the ingress or egress of any owner of adjoining land, the township shall install crossings at such point or points as will afford the owner or owners of the premises suitable ingress thereto or egress therefrom.

As the Supreme Court noted in Kadlec v. Greendale Township Board of Township Supervisors, 583 N.W.2d 817 (N.D. 1998), townships have general jurisdiction over construction of drainage in their township road ditches:

The board of supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township. N.D.C.C. § 24-06-01. "Supervise" means "to coordinate, direct, and inspect continuously and at first hand the accomplishment of," and to "oversee with the powers of direction and decision the implementation of one's own or another's intentions." Webster's Third New International Dictionary, at p. 2296 (1971). Section 24-03-06, N.D.C.C., imposes upon a board of township supervisors a duty to not construct or reconstruct a road in a way that blocks a natural watercourse:

Any and all highways of any kind hereafter constructed or reconstructed by the department, any board of county commissioners, any board of township supervisors, their contractors, subcontractors or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into such ditches to drain into coulees, rivers, and lakes according to the surface and terrain where such highway or highways are constructed in accordance with scientific highway construction and engineering so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. In the construction of highways, as herein provided, the natural flow and drainage of surface waters may not be obstructed, but such water must be permitted to follow the natural course according to the surface and terrain of the particular terrain.

Still, the township does not act in a void.

When construction, reconstruction, or insertion of a culvert in a township road will increase surface water flow in other townships, the township must give notice to the other affected townships. See N.D.C.C. § 24-06-26.1. A township also ***has authority to construct and maintain ditches along roadways. See N.D.C.C. §§ 24-06-11, 24-06-26, and 24-06-26.1.*** If a board of township supervisors denies permission to maintain a ditch, the petitioner may appeal that decision to the water resource board that has jurisdiction over the ditch. See N.D.C.C. § 24-06-26.3. ***However, a water resource board is given no appeal authority when a township proposes to install a culvert.***

It was moved by Manager Hejl and seconded by Manager Sundberg to dismiss the Complaint. Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain No. 201313 for Larry R. Roth in Sections 7, 17 and 18 in Harwood Township

The Board reviewed *Application to Install a Subsurface Drain No. 201313* dated September 13, 2013, for Larry R. Roth. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in all of those portions of Sections 7, 17, and 18 in Harwood Township west of Interstate 29. The project will include six outlets. There is one outlet proposed for Section 7; the outlet will be on the south boundary of Section 7 and will discharge directly into Cass County Drain No. 30. The Rush River Water Resource District owns and operates Drain 30. The second outlet on Section 7 will lie in the southeast corner of Section 7 and will discharge directly into Cass County Drain No. 13. The Rush River Water Resource District owns and operates this portion of Drain 13. There will be three outlets along the north boundary of Section 18, and all will discharge directly into Drain 13. With regard to Section 17, Applicants will install a buried tile line to convey the tile discharge underground along and across the west boundary of the NW 1/4 of Section 7, heading north across and along the unimproved section line between Sections 17 and 18; the buried pipeline will run north until just south of the Interstate 29 highway right-of-way; from there, Applicants will install the buried pipeline along and under portions of the northeast corner of Section 18 and the southeast corner of Section 7 until the buried pipeline daylights and discharges directly into Drain 13. All six of the outlets will be gravity outlets.

Because the outlets will all discharge directly into legal drains, no *Thirty-Day Notice* was necessary under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners as a condition to the permit. The Board will require Applicant to install and maintain erosion protection in Drains 30 and 13 to avoid erosion in the legal drains. Further, the Board will require Applicant to execute a *Utility Permit* regarding Drain 30 and a separate *Utility Permit* regarding Drain 13; those *Utility Permits* contain additional language to protect the Board's legal drains and right-of-way.

According to records on file with the Cass County Recorder's Office, Larry and Leone Roth own those portions of Sections 7, 17, and 18 that lie west of Interstate 29 in Harwood Township.

It was moved by Manager Hejl and seconded by Manager Sundberg to approve *Utility Permits* to allow Applicant to install and maintain gravity tile outlets into Drain 13 and Drain 30, and to approve *Application to Install a Subsurface Drain No. 201313* dated September 13, 2013, for Larry R. Roth in Sections 7, 17, and 18 in Harwood Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;

- 2) That Applicant provide and maintain adequate erosion protection at any and all outlets into Drain 13 (Applicant is solely responsible for any damages to Drain 13 as a result of the tile project);
- 3) That Applicant provide and maintain adequate erosion protection at any and all outlets into Drain 30 (Applicant is solely responsible for any damages to Drain 30 as a result of the tile project);
- 4) That Applicant obtain written permission from the Harwood Township Board of Township Supervisors to construct, operate, and maintain buried tile pipeline along or across the unimproved section line between Sections 17 and 18;
- 5) That Applicant notify the Rush River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) That Applicant notify the Rush River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 7) That Applicant obtain an approved *Utility Permit* from the Rush River Water Resource District regarding any and all outlets into Drain 13;
- 8) That Applicant obtain an approved *Utility Permit* from the Rush River Water Resource District regarding any and all outlets into Drain 30; and
- 9) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Drain #52 Hydraulic Study – cost estimate

It was moved by Manager Hejl and seconded by Manager Sundberg to direct Moore Engineering, Inc. to update the hydraulic analysis on Drain #52, at a cost not to exceed \$4,000. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – design of Rush River and Lower Rush River inlets

Mr. Opat presented comments for consideration by the Board regarding the design of the Rush and Lower Rush River inlets into the Metro Flood Diversion Project. He will incorporate changes to the comments prior to submitting them to the Corps of Engineers.

It was moved by Manager Hejl and seconded by Manager Sundberg to authorize Moore Engineering, Inc. to survey the Lower Rush River channel bottom every 500' for 1.5 miles, upstream of the proposed Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Hejl, seconded by Manager Sundberg and unanimously carried to approve the minutes of the August 20, 2013, meeting, as amended.

Bills

It was moved by Manager Sundberg and seconded by Manager Hejl to approve payment of Checks #3831 through #3840 and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Wolfer, Hejl, and Sundberg. The Chairman declared the motion passed.

Cass County Highway 32 - bridge over the Rush River, west of Amenia

The Board discussed the Cass County Highway 32 bridge over the Rush River, west of Amenia. The Board did not take a position on the matter.

Adjournment

There being no further business to be considered by the Board, it was moved by Manager Hejl, seconded by Chairman Sundberg and unanimously carried to adjourn the meeting.

APPROVED:

Raymond Wolfer
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer